

Montana 3rd state to allow doctor-assisted suicide

January 1 2010, By MATT GOURAS , Associated Press Writer

(AP) -- The Montana Supreme Court said Thursday that nothing in state law prevents patients from seeking physician-assisted suicide, making Montana the third state that will allow the procedure.

Patients and doctors had been waiting for the state's high court to step in after a lower court decided a year ago that constitutional rights to privacy and dignity protect the right to die.

The Montana Supreme Court opinion will now give doctors in the state the freedom to prescribe the necessary drugs to mentally competent, terminally ill patients without fear of being prosecuted, advocates said.

Steve Johnson, a 72-year-old Helena cancer patient, welcomed the decision, saying he has talked with his doctor about ending his life.

"I am very concerned about the intense pain and loss of dignity," the lifelong rancher and veterinarian said at a press conference at the Capitol. "I've accepted my death. I approach the end of my life with a clear mind."

The Supreme Court didn't go as far as District Judge Dorothy McCarter of Helena did last December when she extended constitutional protections to the procedure.

The Supreme Court decided not to determine whether the Montana Constitution guarantees the right. Instead, it said nothing in state law or

the court's precedent indicated it was against public policy - and pointed to laws giving patients rights to make crucial decisions as a justification for legalizing the assistance.

"The Montana Supreme Court has determined that this is a choice that state law entrusts to Montana patients, not to the government," said Compassion & Choices Legal Director Kathryn Tucker, a lawyer on the case. "Montanans trapped in an unbearable dying process deserve, and will now have, this end-of-life choice."

Oregon and Washington state allow assisted suicides for terminally ill patients, with Oregon adopting the nation's first "death with dignity" law in 1997. Tucker said Montana doctors should now feel comfortable adopting procedures that doctors in the other two states use.

The Montana ruling came in the case Compassion & Choices filed on behalf of Robert Baxter of Billings and four physicians. Baxter, who was diagnosed with leukemia 12 years ago, died of lymphoma Dec. 5, 2008 - the day McCarter issued her ruling.

The Montana attorney general's office, which had argued in court that the decision on such a policy should be left to the Legislature, said Thursday that the opinion shows that the issue still needs to be resolved by lawmakers.

The conservative [Montana](#) Family Foundation bemoaned the court's opinion that found the practice legal on statutory grounds. The assisted suicide opponents promised to take the fight to the Legislature.

"Definitely not what we wanted, but not as bad as it could have been," group president Jeff Laszloffy said in an e-mail update to members. "The fact that the court did not find a constitutional right to physician assisted suicide is good for those of us opposed to this abhorrent

practice."

The [Supreme Court](#), pointing to the Legislature's own policy-making, ruled that assisted suicide is an acceptable defense to any homicide charges against the doctor.

"In physician aid in dying, the patient, not the physician, commits the final death-causing act by self-administering a lethal dose of medicine," Justice William Leahart wrote for the court.

Justice John Warner, serving his last day on the court, wrote in a separate concurring opinion that the court decided to leave the constitutional issues alone because addressing them was not necessary.

Justice James Nelson, a more liberal member of the court, said he would have extended the constitutional right to the procedure as the lower court had.

Two judges dissented from the decision, saying the court was reversing long-standing public policy.

"Until the public policy is changed by the democratic process, it should be recognized and enforced by the courts," wrote Justice Jim Rice for the minority. "In my view, the court's conclusion is without support, without clear reason, and without moral force."

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